



WORKERS' COMPENSATION COMPLIANCE

# Summary of legislative and regulatory changes

*April 2022*

## TABLE OF CONTENTS

Alabama .....	3
House Bill 488 .....	3
Arizona .....	4
Senate Bill 1403 .....	4
House Bill 2202 .....	4
Colorado .....	6
Georgia .....	7
Kentucky .....	8
New Hampshire .....	9
Tennessee .....	10
Senate Bill 2353/House Bill 2463 .....	10
Senate Bill 2285/House Bill 1749 .....	10
Senate Bill 2437/House Bill 2187 .....	10
Senate Bill 1569/House Bill 335 .....	11
Virginia .....	12
House Bill 689 .....	12
House Bill 932 .....	12
House Bill 1042/Senate Bill 562 .....	12
Senate Bill 351 .....	13
Senate Bill 677 .....	13
House Joint Resolution 11 .....	13
Washington .....	14
House Bill 1902 .....	14
Senate Bill 5701 .....	14
Senate Bill 5890 .....	15
Wisconsin .....	16
Legislation to Watch .....	18

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# Alabama

On April 7, 2022, the 2022 Alabama Legislative session adjourned. Following is an enacted bill of interest to public entities in the state that becomes effective July 1, 2022.

## *House Bill 488*

On April 7, 2022, [House Bill 488](#) was enacted to retroactively add death of a first responder due to COVID-19, contracted between March 13, 2020 and December 31, 2022, as received while engaged in the performance if his or her duty. To qualify, COVID-19 must be confirmed by a positive test or diagnosis by a licensed medical professional within 14 calendar days after being required to report to his or her usual place of employment.

This bill defines “first responder” as firefighters, peace officers, rescue squad members and emergency medical services personnel. The bill also amends the definition of “emergency medical services personnel” to only include state, county or municipal employees.

For purposes of death caused by COVID-19, eligible dependents or beneficiaries of the deceased first responder are entitled to the death benefit regardless of the first responder’s vaccination status against COVID-19 and regardless of whether the first responder regularly wore masks or other filtration devices in the performance of his or her duties.

Other non-substantive, technical revisions to update exiting code language were also made. The funds for this state benefit are payable by the State General Fund.

# Arizona

## *Senate Bill 1403*

On April 19, 2022, Gov. Doug Ducey signed [Senate Bill 1403](#). Following are key provisions:

- Requires that an insurance carrier or self-insured employer who receives a written notification that an injured employee intends to file a claim for compensation must:
  - Forward the notification of the injury and intended claim to the Industrial Commission of Arizona (ICA) within seven business days.
  - Inform the employee of the requirement for the employee to file a claim with the ICA.
- Provides that the requirement to file a claim within one year of the injury is suspended, from the date that the insurance carrier or self-insured employer received written notification of the injury and intended claim until the date that the insurance carrier or self-insured employer forwards the written notification to the ICA.
- Requires the ICA, upon receiving the forwarded notification, to notify to the employee of their responsibility to file a claim with the ICA.
- Clarifies the additional expenses for reasonable and necessary medical and hospital care and laboratory work relating to a petition to reopen a claim must be incurred within 15 days before, rather than 15 days after, the date that the petition is filed.

This measure becomes effective 90 days after the legislative session adjourns.

## *House Bill 2202*

On March 24, 2022, Gov. Ducey signed [House Bill 2202](#) that provides duties the ICA must undertake prior to taking final action on the schedule of fees for healthcare providers attending injured employees and prescription medicines required to treat injured employees.

This bill requires the ICA, except during a public health emergency, to:

- Prominently post on its publicly accessible website the proposed schedule of fees at least 30 days before conducting a public hearing on that proposed schedule of fees.
- Hold at least one meeting that all interested parties may jointly attend after posting the proposed schedule of fees, but before conducting the hearing on the proposed schedule of fees.

- At least seven business days in advance, prominently post on its publicly accessible website the final proposed schedule of fees to be acted on for adoption.

This bill became effective upon signing as an emergency measure.

# Colorado

## *House Bill 22-1262*

On April 12, 2022, Gov. Jared Polis signed [House Bill 22-1262](#). This bill continues the authority of the director of the Division of Workers' Compensation (DWC) to fine an employer for a second violation of failing to carry workers' compensation insurance until Sept. 1, 2033. This authority allows the director to:

- Fine an employer up to the maximum amount if the violation occurs more than seven years after the prior violation.
- Enter into a settlement agreement with an employer and accept an amount less than the minimum fine allowed in statute.
- Only impose fines for periods that take place no more than three years prior to the date an employer is notified of a potential violation by the division.

Fines collected from an uninsured employer are paid into the Colorado Uninsured Employer to provide financial assistance to workers injured on the job while working for an employer without workers' compensation insurance.

The director's authority was set to expire July 1, 2022, and the bill became effective upon signature of the governor.

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## Georgia

The Georgia General Assembly adjourned April 5, 2022. There was only one bill passed that will directly impact workers' compensation claims.

### *House Bill 1409*

On May 2, 2022, Gov. Brian Kemp signed [House Bill 1409](#) into law. This legislation:

- Increases the maximum rates payable for temporary total disability (TTD) and permanent partial disability (PPD) from \$675 to \$725 per week.
- Increases the maximum payable for temporary partial disability (TPD) from \$450 to \$483 per week.
- Increases the maximum benefit payable to a surviving spouse with no other dependents to \$290,000.

These changes become effective July 1, 2022.

# Kentucky

The 2022 regular session of the Kentucky General Assembly adjourned April 14, 2022. Of the 169 bills signed into law by Gov. Andy Beshear, the following two impact workers' compensation.

## *House Bill 307*

On March 30, 2022, the governor signed [House Bill 307](#) relating to permissible workers' compensation and liability self-insurance group investments.

This legislation also defines "nationally recognized statistical rating organization" as used in this bill as a credit rating agency approved by the United States Securities and Exchange Commission to provide assessments of the creditworthiness of financial instruments.

## *House Bill 506*

The governor signed [House Bill 506](#) into law on March 29, 2022. This comprehensive legislation recognizes and regulates professional employer organizations (PEOs).

This bill specifically defines PEOs, creates requirements PEOs must follow to be recognized in Kentucky, and the parameters of their relationships with employers. The workers' compensation requirements of PEO's and the client as well as actions that may be taken by the Department of Workers' Claims against any violations are also included in this legislation.

PEOs are required to complete initial registration no later than 180 days after the effective date of the Act and will be required to pay a registration fee. Companies are prohibited from knowingly providing professional employer services or advertising their services as a PEO without becoming registered.

Due to the comprehensive nature of this measure and its potential impact on existing agreements between PEOs and employers in Kentucky, it is recommended that employers review each of their PEO agreements.

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# New Hampshire

## *House Bill 589*

Gov. Chris Sununu signed [House Bill 589](#) on April 11, 2022. This bill amends the definition of "critical exposure" for the purpose of the workers' compensation law and requires the payment of all expenses associated with the medical evaluation and recommended post-exposure prophylaxis treatment for emergency response/public safety workers by the employer's insurance carrier or third-party administrator.

The bill also indicates that the provision of treatment determined by the medical provider is provided without prejudice as to the issue of the causal relationship of any subsequently diagnosed bloodborne disease or airborne disease to the emergency response/public safety worker's work and without prejudice to the compensability of the bloodborne disease or airborne disease as an occupational disease or an accidental injury.

This legislation became effective 30 days after its passage.

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## Tennessee

The 112<sup>th</sup> Tennessee General Assembly adjourned on April 28, 2022. Following is an overview of enacted legislation impacting workers' compensation.

### *Senate Bill 2353/House Bill 2463*

On March 24, 2022, Gov. Bill Lee signed [Senate Bill 2353/House Bill 2463](#) into law. This legislation extends the deadline from the last day of the sixth month following the end of the fiscal year to the last day of the ninth month for an employer to file an annual certified financial statement with the Department of Commerce and Insurance for purposes of showing the employer's ability to pay all workers' compensation claims that may arise against the employer.

The bill was effective upon signing.

### *Senate Bill 2285/House Bill 1749*

On April 14, 2022, Gov. Lee signed [Senate Bill 2285/House Bill 1749](#), which adds a new section to the Tennessee Uniform Administrative Procedures Act (UAPA) relative to state agencies.

This bill specifies the framework for interpreting contested cases by a court, administrative judge or hearing officer and prohibits reliance on a state agency's interpretation of a statute or rule.

The legislation became effective upon signing.

### *Senate Bill 2437/House Bill 2187*

[Senate Bill 2437/House Bill 2187](#) was signed into law on March 18, 2022 and becomes effective July 1, 2022.

This bill:

- Provides that a workers' compensation appeals judge may be reappointed for up to three terms of six years, instead of two.
- Provides that the chief judge of the court of workers' compensation claims may be reappointed by the administrator upon expiration of a term if the chief judge has served competently, responsibly and impartially.

- Changes the conditions to appeal the board's decision on whether to certify a compensation order of the court.

## *Senate Bill 1569/House Bill 335*

[Senate Bill 1569/House Bill 335](#) adds any condition or impairment of health caused by leukemia or testicular cancer to the list of cancers for which a rebuttable presumption is established that the condition occurred in the line of duty and is compensable.

This legislation only applies to full-time firefighters of a fire department of the state or a political subdivision of the state. To use this rebuttable presumption, eligible firefighters must obtain a medical examination that includes a cancer screening after July 1, 2022 that fails to reveal any evidence of leukemia or testicular cancer.

The bill was sent to the governor on May 18, 2022, and he is expected to sign.

# Virginia

The 2022 Virginia General Assembly session adjourned on March 12, 2022. Gov. Glenn Youngkin had until April 11, 2022, to act on the legislation passed. Following is an overview of the workers' compensation bills enacted that become effective July 1, 2022.

## *House Bill 689*

[House Bill 689](#) was approved by the governor on April 8, 2022. This bill amends the employer's duty to furnish medical attention as follows:

- Adds scooters to the list of medical equipment an employer is required to furnish to an employee when a compensable accident results in the amputation or loss of use of an arm, hand, leg or foot or other specified circumstances under the Virginia Workers' Compensation Act.
- Increases the limits on the aggregate cost of items and modifications required to be furnished by an employer to an injured employee from \$42,000 to \$55,000 with increases annually.

## *House Bill 932*

[House Bill 932](#) was approved by the governor on April 11, 2022. It extends from Dec. 31, 2021 to Dec. 31, 2022, the date by which COVID-19 causing the death or disability of a healthcare provider is presumed to be an occupational disease compensable under the Workers Compensation Act.

To be eligible for the presumption, the claimant is required to receive a positive diagnosis of COVID-19 from a licensed physician, nurse practitioner or physician assistant after a presumptive positive test or a laboratory-confirmed test for COVID-19 and presented with signs and symptoms of COVID-19 that required medical treatment.

## *House Bill 1042/Senate Bill 562*

On April 11, 2022, the governor approved [House Bill 1042](#). This legislation adds the following time limits for occupational cancer claims presumed to be in the line of duty, unless overcome by a preponderance of competent evidence to the contrary.

- Two years after a diagnosis of the disease is first communicated to the employee or within 10 years from the date of the last injurious exposure in employment, whichever occurs first.

- Bars a claim for benefits because of the diagnosis of a listed cancer if an employee is 65 years of age or older, regardless of the date of diagnosis, communication or last injurious exposure in employment.

The bill applies to any volunteer or salaried firefighter, Department of Emergency Management hazardous materials officer, commercial vehicle enforcement officer or motor carrier safety trooper employed by the Department of State Police, or full-time sworn member of the enforcement division of the Department of Motor Vehicles having completed five years of service.

## *Senate Bill 351*

Gov. Youngkin approved [Senate Bill 351](#) on April 11, 2022. This bill requires compensation for permanent and total incapacity to be awarded for the loss of both hands, both arms, both feet, both legs, both eyes or any two thereof either from the same accident or a compensable consequence of an injury sustained in the original accident.

Currently compensation for permanent and total incapacity is required only when such loss occurs in the same accident.

## *Senate Bill 677*

On April 7, 2022, the governor approved [Senate Bill 677](#), which provides that cost-of-living adjustment (COLA) supplements are payable to claimants who are receiving disability benefits under the Virginia Workers' Compensation Act but are not receiving federal disability benefits.

Currently COLA supplements are only payable for claimants or their dependents if the combined disability and federal old-age and disability benefits is less than 80% of the average monthly earnings of the claimant before disability or death.

## *House Joint Resolution 11*

On March 10, 2022, both Chambers passed [House Joint Resolution 11](#) requesting the Virginia Workers' Compensation Commission (VWCC) to study the practice of charging workers' compensation premiums on bonus pay, vacation time and holidays.

The VWCC is requested to complete its meetings by Dec. 1, 2022 and submit its findings no later than the first day of the 2023 Regular Session of the General Assembly.

# Washington

The Washington State Legislature adjourned March 10, 2022. Below is an overview of workers' compensation legislation enacted.

## *House Bill 1902*

On March 31, 2022, Gov. Jay Inslee signed [House Bill 1902](#) related to the process for reopening a workers' compensation claim. This bill is effective June 9, 2022 and allows the claimant to receive compensation and other benefits for more than 60 days, not to exceed 120 days if the following exceptions apply:

- The application was not received by the Washington Department of Labor and Industries (L&I) or the self-insurer within 60 days due to a failure of the provider.
- The worker demonstrates that the worker information page was completed and submitted to the L&I, the self-insurer or the provider within 30 days of provision of the relevant medical services.

The L&I or self-insurer must provide notice of the submission deadlines to the claimant on any forms provided for use as claim reopening applications.. <https://lawfilesextract.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5701-S.SL.pdf?q=20220525095753>

## *Senate Bill 5701*

The governor signed [Senate Bill 5701](#) into law on March 11, 2022. This bill relates to determining monthly wages for workers' compensation purposes for any resident, inmate or patient of a state, county or municipal correctional, detention, treatment or rehabilitative institution.

By Dec. 1, 2024, the Department of Labor and Industries must submit a report to the legislature that details the number of claims which were impacted by this act from July 1, 2022 to June 30, 2024.

Senate Bill 5701 becomes effective June 9, 2022.

## *Senate Bill 5890*

[Senate Bill 5890](#) was signed by the governor on March 11, 2022, to clarify eligibility for the presumption for workers' compensation for all personnel working at a radiological hazardous waste facility.

The provisions of this bill:

- Replaces the definitions for Hanford nuclear site and United States Department of Energy Hanford site workers with definitions for radiological hazardous waste facility and exposed workers.
- Specifies that the worker's compensation presumption for these workers does not apply to communicable respiratory diseases and communicable neurological diseases.
- Defines "exposed worker(s)" as a worker working at a radiological hazardous waste facility for at least an 8-hour shift, including conducting an inspection of the facility.
- Defines "radiological hazardous waste facility" as any structure and its lands where high-level radioactive waste or mixed waste is stored or disposed of, except certain military installations.

This bill became effective upon signing.

# Wisconsin

## *Assembly Bill 911*

On April 8, 2022, Gov. Tony Evers signed [Assembly Bill 911](#), the agreed upon bill approved by the [Wisconsin Advisory Council \(WCAC\)](#) for 2022. This bill makes the following changes to the workers' compensation law, as administered by the Department of Workforce Development and the Division of Hearings and Appeals in the Department of Administration.

- Increases the maximum weekly compensation rate for permanent partial disability to \$415 for injuries occurring before Jan. 1, 2023 and to \$430 for injuries occurring on or after that date.
- Removes the provision in state law regarding employees who are members of a regularly scheduled class of part-time employees and replaces it with a provision that applies to employees who work less than full time. It allows earnings to be based on full-time work if the employee provides required evidence. However, an employer may rebut the employee's evidence by providing evidence that the employee chose to work less than full time.
- Allows an employee to have an observer, chosen and provided by the employee, present during a medical examination that is requested by an employer or insurer following a claim for worker's compensation.
- Provides that if an injured employee or dependent receives compensation from the employee's employer or a third party, and the employee received payments from DWD due to the employer being uninsured, the employee or dependent must reimburse DWD in accordance with the statutory formula.
- Clarifies that any person who "at any time," rather than "usually," employs three or more employees for services performed in this state, is subject to the worker's compensation law. The person becomes subject to the workers' compensation law at the time the person employs three or more employees.
- Allows a person engaged in farming who has had no employee at any time within a continuous two-year period to be deemed to have effected withdrawal from the workers' compensation law.
- Clarifies that the provision in state law that provides coverage for an individual who performs services for a person receiving long-term care benefits under certain long-term care programs and who does not otherwise have workers' compensation coverage for those services is considered to be an employee, only for workers' compensation purposes, of the entity providing financial management services for the person receiving the benefits.
- Creates an exception from the general non-disclosure requirement regarding certain records of DWD, the Division of Hearings and Appeals and the Labor and Industry Review Commission that reveal information about injured employees for records requested by the Department of Health Services or a county department of health services or social services, if the request is limited to the name and address of the

employee, the name and address of the employee's employer and any financial information about that employee contained in the record.

This bill became effective April 10, 2022.

# Legislation to Watch

## *Arizona*

[House Bill 2120](#) narrows the type of injuries that must be included in an injury report by an employer and a physician to injuries requiring medical treatment and stipulates that medical treatment does not include any one time, short-term treatment by non-medical staff that requires little technology or training to administer, including the treatment of minor scratches, cuts, burns and splinters and other issues that ordinarily do not require medical care.

The current session of the Arizona Legislature does not adjourn until June 24, 2022.

The information contained within this document is intended to provide summary level information on proposed or enacted laws related to workers' compensation. It is not intended to provide guidance on the application of these legal requirements or as an update to your Company's workers' compensation policies. We recommend you consult with Legal Counsel to determine what changes, if any, should be applied to Company Policy.

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